

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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David Levoyd Reed,

Case No. 2:19-cv-00326-JAD-BNW

**Plaintiff,**

Order re [70], [88]

V.

James Dzurenda, et al.,

Defendants.

Before the Court is a motion by plaintiff David Levoyd Reed requesting: (1) a stay; (2) more time and discovery; (3) issuance of subpoenas; and (4) denial of defendants' motion for summary judgment. ECF No. 70. Reed filed an appendix of exhibits in support of his motion. ECF No. 87. And defendants filed a response at ECF No. 84.

The Court assumes the parties' familiarity with the procedural history, claims, and facts in this matter. For the reasons below, Reed's motion will be denied, and the March 4, 2021 hearing on Reed's motion will be vacated. Because the hearing will be vacated, the Court will likewise deny as moot Reed's motion at ECF No. 88 requesting the presence of a witness at the hearing.

## I. Background

Reed—an inmate currently in the custody of the Nevada Department of Corrections—initiated this matter with an application for leave to proceed in forma pauperis and an accompanying complaint asserting claims under 42 U.S.C. § 1983. ECF No. 1. Discovery in this matter was originally set to close on September 8, 2020. ECF No. 28. However, upon Reed’s motion, the Court extended discovery to December 8, 2020. ECF No. 48. As such, the deadline within which to complete discovery has been closed for almost two months.

1       **II. Discussion**

2           **A. Request for discovery and subpoenas**

3           As mentioned earlier, the deadline for discovery has passed. Thus, in order to engage in  
4 additional discovery, Reed must first obtain permission from this court to re-open discovery.  
5 When assessing a motion to amend a scheduling order and reopen discovery, a court considers six  
6 factors: (1) whether trial is imminent; (2) whether the request is opposed; (3) whether the non-  
7 moving party would be prejudiced; (4) whether the moving party was diligent in obtaining  
8 discovery within the guidelines established by the court; (5) the foreseeability of the need for  
9 additional discovery; and (6) the likelihood that discovery will lead to relevant evidence. *City of*  
10 *Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017).

11          As an initial matter, the Court notes that in Reed's argument, he cites authorities only in  
12 support of his request that defendants' summary-judgment motion be denied. ECF No. 70 at 10–  
13 13. Under the Local Rules, “[t]he failure of a moving party to file points and authorities in  
14 support of the motion constitutes a consent to the denial of the motion.” LR 7-2(d). Here, the  
15 Court has reviewed Reed's motion and finds that he failed to include any points and authorities to  
16 support his requests for discovery or subpoenas. The Court construes this omission as Reed's  
17 consent to the denial of his motion. Therefore, the motion is denied on this first basis.

18          Even if this court were to overlook Reed's failure to file the proper points and authorities,  
19 it would still deny the request on the merits after applying the factors set forth above. Defendants  
20 oppose Reed's request explaining that they have already filed a dispositive motion and would  
21 thus be prejudiced by having to engage in additional discovery. In addition, Reed has not been  
22 diligent in obtaining discovery. As stated, in September 2020 the Court extended the discovery  
23 schedule to December 8, 2020. ECF No. 48. Reed describes that on *December 24, 2020*, he was  
24 removed from his unit at High Desert State Prison after he kicked his door and broke a padlock  
25 attached to it. ECF No. 70 at 5. He returned to his unit less than a week later but he was informed  
26 that—in the intervening period—certain individuals entered his cell and gave or threw away some  
27 of his property, including legal materials. However, these events occurred more than two weeks  
28 *after* discovery had closed and they do not explain how Reed diligently conducted discovery

1 during the extended discovery period. Further, there is no suggestion that an unforeseen event  
2 prompted the need for additional discovery.

3 Reed's motion also describes that in November 2020 he filed a grievance with the prison  
4 because he was limited to making one phone call each week. ECF No. 70 at 4. The Court finds,  
5 however, that this is insufficient to establish diligence because Reed does not explain how this  
6 limitation impacted his ability to engage in the discovery process. In fact, despite this limitation  
7 Reed filed a motion requesting the issuance of a subpoena in December 2020 during the extended  
8 discovery period, which this Court granted. ECF Nos. 55 and 71. Moreover, the Court has  
9 reviewed the subpoenas Reed requests be issued. ECF Nos. 70-1 through 70-5. The court in its  
10 discretion agrees with Defendants that the discovery sought by the subpoenas is not relevant to  
11 the case at hand.

12 The only factor in Reed's favor is that trial has not been set on this matter. After balancing  
13 all of the relevant factors, Reed's request to re-open discovery will be denied.

14 **B. Request for more time**

15 Reed's motion contains a request for "more time." The Court construes Reed's motion as  
16 one to extend the time for his response to defendants' motion for summary judgment.

17 Defendants' summary-judgment motion was filed on January 21, 2021. ECF No. 63.  
18 Reed states that the district judge issued a minute order requiring him to file a response to this  
19 motion by February 12, 2021. ECF No. 70; *see also* ECF No. 69. However, Reed argues that  
20 because he was removed from his unit and separated from his legal materials, he would be unable  
21 to meet the district judge's deadline.

22 A deadline imposed by the Court can be extended on the basis of good cause. Fed. R. Civ.  
23 P. 6(b). The Rule 6(b) good-cause standard is not rigorous, and courts have construed the test  
24 broadly. *Ahanchion v. Kenan Pictures*, 624 F.3d 1253 (9th Cir. 2010). The Ninth Circuit has  
25 directed that Rule 6(b) "[is] to be liberally construed to effectuate the general purpose of seeing  
26 that cases are tried on the merits." *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983); *Wong v.*  
27 *Regents of the Univ. of Calif.*, 410 F.3d 1052, 1060 (9th Cir. 2005) ("Of course, courts should not  
28 mindlessly enforce deadlines.").

1           Here, Reed's explanation for requiring more time is sparse, but the Court in its discretion  
 2 finds that Reed meets the non-rigorous standard for an extension of the time to file his response to  
 3 defendants' summary-judgment motion. Further, the Court finds that the extension serves the just  
 4 speedy, and inexpensive determination of this proceeding and would aid the district judge in  
 5 resolving this matter on the merits. *See Fed. R. Civ. P. 1.*

6           The Court notes that Reed filed a response to the summary-judgment motion on March 1,  
 7 2021. ECF No. 92. The deadline for Reed's response is extended up to and including this date.<sup>1</sup>  
 8 The court further notes that to the extent Reed's appendix of exhibits at ECF No. 87 was filed in  
 9 support of the opposition to defendants' motion for summary judgment, he must ensure that he  
 10 has also included those arguments (and supporting evidence) in his response at ECF No. 92. If  
 11 Reed needs to supplement his response, he must request to do so by way of motion.

12           **C. Request for a stay**

13           As with the previous requests for relief, the Court finds that Reed failed to include points  
 14 and authorities in support of his request for a stay. Instead, Reed's argument focuses entirely on  
 15 why defendants' summary-judgment motion should be denied. Therefore, the Court first denies  
 16 Reed's request for a stay under LR 7-2(d) ("[t]he failure of a moving party to file points and  
 17 authorities in support of the motion constitutes a consent to the denial of the motion."). But, as  
 18 explained below, Reed's request will be denied on the merits, too.

19           It is unclear to the Court whether Reed seeks a stay of discovery or stay of proceedings.  
 20 As noted above, discovery in this matter closed in December 2020. Therefore, to the extent Reed  
 21 seeks a discovery stay, this request is denied.

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24           <sup>1</sup> The Clerk of Court docketed the underlying motion as a response to defendants' summary-  
 25 judgment motion. *Compare* ECF No. 70 and ECF No. 73. Thus, according to the docket, Reed filed  
 26 responses to the summary-judgment motion at ECF No. 73 on January 27 **and** at ECF No. 92 on March 1.  
 27 Because Reed explicitly stated in the underlying motion that he would be unable to meet the district  
 28 judge's deadline for a response to the summary-judgment motion, ECF No. 70 at 7:24–7:26, the Court  
 nonetheless finds good cause to extend the deadline for Reed's response up to and including March 1.  
 Ultimately, the district judge will decide which filing(s) she will construe as Reed's response and, if  
 applicable, whether Reed's "response" at ECF No. 92 constitutes a surreply.

1           Regarding a stay of proceedings, the trial court has the discretionary power to stay  
 2 proceedings in its own court. *See Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936). Thus, the  
 3 Court “may, with propriety, find it is efficient for its own docket and the fairest course for the  
 4 parties to enter a stay of an action before it, pending resolution of independent proceedings which  
 5 bear upon the case.” *Leyva v. Certified Grocers of Cal. Ltd.*, 593 F.2d 857, 869 (9th Cir. 1979).  
 6 “If there is even a fair possibility that the stay . . . will work damage to someone else, the stay  
 7 may be inappropriate absent a showing by the moving party of ‘hardship or inequity.’” *Hosp. of*  
 8 *Barstow, Inc. v. Sebelius*, 2012 WL 893784, at \*2 (C.D. Cal. Mar. 13, 2012) (cleaned up) (citing  
 9 *Landis*, 299 U.S. at 255). Further, being required to defend a suit—without more—does not  
 10 constitute a clear case of hardship or inequity. *Id.*

11           Here, the Court in its discretion find that a stay of proceedings is inappropriate in this  
 12 matter. To begin, Reed argues in his request that the Court should issue an indefinite stay until he  
 13 is released from prison or transferred to the Clark County Detention Center. Reed directs the  
 14 Court to a motion for preliminary injunctive relief that he filed in case number 2:18-cv-01847-  
 15 APG-DJA. In that case, Reed asked the district judge to issue an order transferring him to the  
 16 Clark County Detention Center or releasing him.<sup>2</sup> But the district judge has since denied Reed’s  
 17 motion.<sup>3</sup> More importantly, however, the Court can discern no hardship or inequity that Reed  
 18 would suffer should his request for a stay be denied.

19           Further, a stay would result in hardship to defendants. Defendants have been involved in  
 20 this case since September 2019. They have engaged in the discovery process and have a  
 21 dispositive motion pending before the district judge. *See* ECF No. 63. And, as defendants point  
 22 out, the longer this matter goes on, the greater the chances that the memories of relevant  
 23 witnesses will fade.

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27           <sup>2</sup> *Reed v. North Las Vegas Police Dep’t*, 2:18-cv-01847-APG-DJA, ECF No. 59 at 1.

28           <sup>3</sup> *Id.*

1           With these considerations in mind, the Court finds that a stay is not efficient for the  
2 Court's docket or the fairest course of action in this matter. Therefore, Reed's request for a stay  
3 will be denied.

4           **D. Request to deny defendants' motion for summary judgment**

5           Reed's motion requests denial of defendants' motion for summary judgment. This motion  
6 (and Reed's response(s) to it) are currently pending before the district judge. Therefore, this  
7 Court will not consider alternative points against the summary-judgment motion and will instead  
8 reserve them for the district judge's consideration at a later date.

9           **E. Motion for writ of habeas corpus (ECF No. 88)**

10          Reed's motion at ECF No. 88 asks the Court to issue an order requiring the presence of  
11 Reed's fellow detainee at the March 4, 2021 hearing. Because the Court's written order resolves  
12 all the matters set for the March 4 hearing, the hearing will be vacated. As a result, Reed's  
13 request for a writ will be denied as moot.

14          Further, the Court emphasizes that were the March 4 hearing still set to occur, the Court  
15 would still deny Reed's motion on the merits. The March 4 hearing was not intended to be an  
16 evidentiary hearing, and the Court did not intend to take the testimony of any witnesses.

17          **III. Conclusion**

18          IT IS THEREFORE ORDERED that Reed's motion requesting a stay, more time and  
19 discovery, and denial of defendants' motion for summary judgment (ECF No. 70) is DENIED.

20          IT IS FURTHER ORDERED that the March 4, 2021 hearing is VACATED.

21          IT IS FURTHER ORDERED that Reed's motion for a writ of habeas corpus (ECF No. 88)  
22 is DENIED as moot.

23          DATED: March 4, 2021.



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25          BRENDA WEKSLER  
26          UNITED STATES MAGISTRATE JUDGE  
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